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Conflict of Laws

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CONFLICT OF LAWS

USURY—SELECTION OF LAWS GOVERNING

Arkansas. In the case of *Jones v. Tindall*[1] an agent of Tindall traveled into Arkansas and carried on preliminary discussions with Jones regarding the making of a loan. Jones thereafter went to Memphis, Tennessee, and signed a series of promissory notes, payable in Tennessee, and a deed of trust conveying his 40-acre farm as security for the notes. Though the notes were executed in and were payable in Tennessee, they contained the following provision:

> "The property herein described being located in the State of Arkansas, this deed of trust and the notes and indebtedness hereby secured shall, without regard to the place of contract or of payment, be construed and enforced according to the laws of the State of Arkansas, and with reference to the laws of which state the parties to this agreement are now contracting."

Jones later refused to make payment on the ground that the notes were in excess of the amount he actually owed. Tindall brought suit to foreclose the deed of trust, and the chancery court rendered a decree in his favor.

In reversing the decree of the chancery court the Supreme Court of Arkansas held the notes to be usurious according to the law of Arkansas. It was ruled that the parties could properly select the law of Arkansas to govern their contract, as Arkansas was the domicile of the borrower, situs of the security, and place where preliminary negotiations were conducted. While the decision in this case may be in accord with Arkansas authority,[2] it is opposed to the attitude of most courts which will not deem a transaction usurious if there is some ground on which that result may be

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[1] 216 Ark. 431, 226 S. W. 2d 44 (1950).

[2] McDougall v. Hachmeister, 184 Ark. 28, 41 S. W. 2d 1088 (1931); Lanier v. Union Mortgage, Banking & Trust Co., 64 Ark. 39, 40 S. W. 466 (1897). Both of these cases cited the same rule of law as the principal case, but its application resulted in upholding the validity of the contracts in question, whereas the result in the principal case was to invalidate the contract.

avoided.[3] These courts hold that the parties intend to enter into a valid contract and that its obligations should be enforced if the contract satisfies the law of any state with which it has a substantial connection.[4] This rule has been applied to uphold contracts even though the parties have expressly stipulated that the contract should be controlled by the laws of a state where usury would be found.[5] In the principal case, however, the Arkansas court held that the parties could select the law by which their contract would be governed, although the application of the law invalidated the very contract into which they had entered.

Enforcement of Void Foreign Judgments

Oklahoma. In the case of *Kennedy v. Chadwell*[6] plaintiffs had been attorneys for the children of the defendant in an action in California against their father. The California court had rendered judgment that the defendant make payment of attorney's fees direct to the attorneys. Plaintiffs brought suit in Oklahoma to recover on this foreign judgment. The Oklahoma court, in rendering judgment for defendant, held that, in the absence of statutory authority, the California court could not order payment of the fees direct to the attorneys. The court cited several California cases[7] which held such a judgment void for lack of jurisdiction notwithstanding the failure of the losing party to appeal therefrom. Since the judgment would have been held void in California, the Supreme Court of Oklahoma refused to enforce the judgment. This decision is in accord with American authority to the effect that if a judgment is not valid in the state in which it is entered, it should not be valid elsewhere.[8]

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[3] See Recent Cases, 79 U. Pa. L. Rev. 494 (1931).

[4] Stumberg, Conflict of Laws (2d ed. 1951) 237.

[5] Brierly v. Commercial Credit Co., 43 F. 2d 730 (3d Cir. 1930). Defendant was a Delaware corporation which contracted in Maryland to buy accounts receivable from a corporation in Pennsylvania. It was stipulated that the contract would be governed by the law of Delaware, but the court enforced the contract under Maryland law, since under Pennsylvania and Delaware law the contract was usurious.

[6] .....Okla....., 215 P. 2d 548 (1950).

[7] Stevens v. Stevens, 215 Cal. 702, 12 P. 2d 432 (1932); Garra v. Superior Court, 58 Cal. App. 2d 588,, 137 P. 2d 31 (1943); Pennell v. Superior Court, 87 Cal. App. 375, 262 Pac. 48 (1927); Chavez v. Scully, 62 Cal. App. 6, 216 Pac. 46 (1923).

[8] Stumberg, Conflict of Laws (2d ed. 1951) 114-115. Extra-territorial effect of a

English doctrine, as expressed in *Pemberton v. Hughes*,[9] is to the contrary, and the jurisdiction of a foreign court will only be examined to determine the power of the court to entertain the type of case in question and to require the defendant to appear. This doctrine, if generally accepted, would lead to the result that a judgment would be valid everywhere except in the jurisdiction in which it was entered.[10]

AUTOMOBILES—VALIDITY OF FOREIGN MORTGAGES

Texas. In *Bank of Atlanta v. Fretz*[11] an automobile had been purchased for cash by Harris from an automobile dealer in Georgia. Harris at a later date executed a bill of sale and a chattel mortgage covering this automobile to the Bank of Atlanta to secure his promissory note. The mortgage was properly filed for record in Georgia, and the bank acquired a valid lien in that state. Thereafter Harris, without the knowledge or consent of the bank, drove the automobile to Texas and applied for a certificate of title, fraudulently representing that no liens existed against the automobile. On the same day he sold the automobile to defendant Fretz and delivered to him an assignment of the application for a certificate of title. Defendant Fretz, without actual knowledge of the existing lien, applied for and received a certificate of title from the Texas Highway Department. Fretz then sold the automobile to defendant Sweiven, who also had no knowledge of the lien and who applied for and received a certificate of title from the Texas Highway Department. The Bank of Atlanta brought action to foreclose the mortgage lien on the automobile, but foreclosure was

judgment should depend upon its effect where entered. If, in spite of error, it is valid there, it should be valid in other states.

[9] 68 L. J. Ch. 281, 1 Ch. 781 (1899). The question before the court was one of recognition of a Florida divorce decree. In the proceedings, summons was made one day less than the required period before appearance. Under Florida law the decree was void. The English court held it was not subject to attack in England as the jurisdictional requirements under the rules of conflict of laws had been satisfied. If these rules are satisfied, the English courts will not look to the ultimate validity of the judgment in the state where it was first entered.

[10] STUMBERG, CONFLICTS OF LAWS (2d ed. 1951) 115.

[11] 148 Tex. 551, 226 S. W. 2d 843 (1950), *rev'g* 221 S. W. 2d 297 (Tex. Civ. App. 1949).

denied by the trial court and the court of civil appeals. On appeal the Supreme Court of Texas reversed the lower court and held that the foreign mortgage of the Bank of Atlanta was superior to the title acquired at a later date by an innocent purchaser in Texas.

While the decision in the principal case is in accord with the general rule,[12] it is a complete reversal of the so-called "Texas doctrine." It has long been held in Texas that where a mortgaged automobile was brought into the state and was purchased by an innocent purchaser, the owner of the mortgage lien was not protected although the mortgage had been duly filed and was valid in the state where it was given.[13] The Texas court, was strongly influenced by the weight of authority elsewhere[14] and by the Certificate of Title Act.[15]

The court stated that the purpose of the act was to prevent the importation of stolen automobiles into Texas and to prevent the sale of encumbered automobiles without disclosure of encumbrances to the purchaser. In requiring liens to be recorded on the certificate of title, the purpose of the Legislature was to cover sales of, and liens upon, motor vehicles in Texas, and not to invalidate liens acquired in other states. If the Legislature had intended to invalidate liens acquired in states not having certificate of title laws, it could have stated that such liens would be forfeited when the vehicle reached the hands of an innocent purchaser in Texas. While the court emphasized the fact that the automobile was removed without the knowledge or consent of the lienholder, its

[12] RESTATEMENT, CONFLICT OF LAWS (1934) § 265 *et seq.*; GOODRICH, CONFLICT OF LAWS (3rd ed. 1949) 470. Questions of title to chattels are generally recognized to be governed by the law at the situs. RESTATEMENT, CONFLICT OF LAWS (1934) § 268. The interest of a lienor in a chattel will not be defeated by acquisition by another in another state if the chattel was wrongfully removed to that state. STUMBERG, CONFLICT OF LAWS (2d ed. 1951) 393.

[13] Consolidated Garage Company v. Chambers, 111 Tex. 293, 231 S. W. 1072 (1921); Farmer v. Evans, 111 Tex. 283, 233 S. W. 101 (1921). These cases established the "Texas doctrine" that, to be valid, the mortgage had to be recorded in Texas. The doctrine was based on the court's construction of VERNON'S SAYLES' TEX. CIV. STAT. 1914, arts. 5654, 5655 (now TEX. REV. CIV. STAT. (Vernon, 1948) arts. 5489 and 5490).

[14] General Motors Acceptance Corp. v. Nuss, 195 La. 209, 196 So. 323 (1940); Metro Plan, Inc. v. Kotcher-Turner, Inc., 296 Mich. 400, 296 N. W. 304 (1941); see Lee, *Conflict of Laws Relating to Installment Sales*, 41 Mich. L. Rev. 445 (1942); 10 AM. JUR., *Chattel Mortgages*, § 21, p. 729.

[15] TEX. PEN. CODE (Vernon, 1948) art. 1436-1.